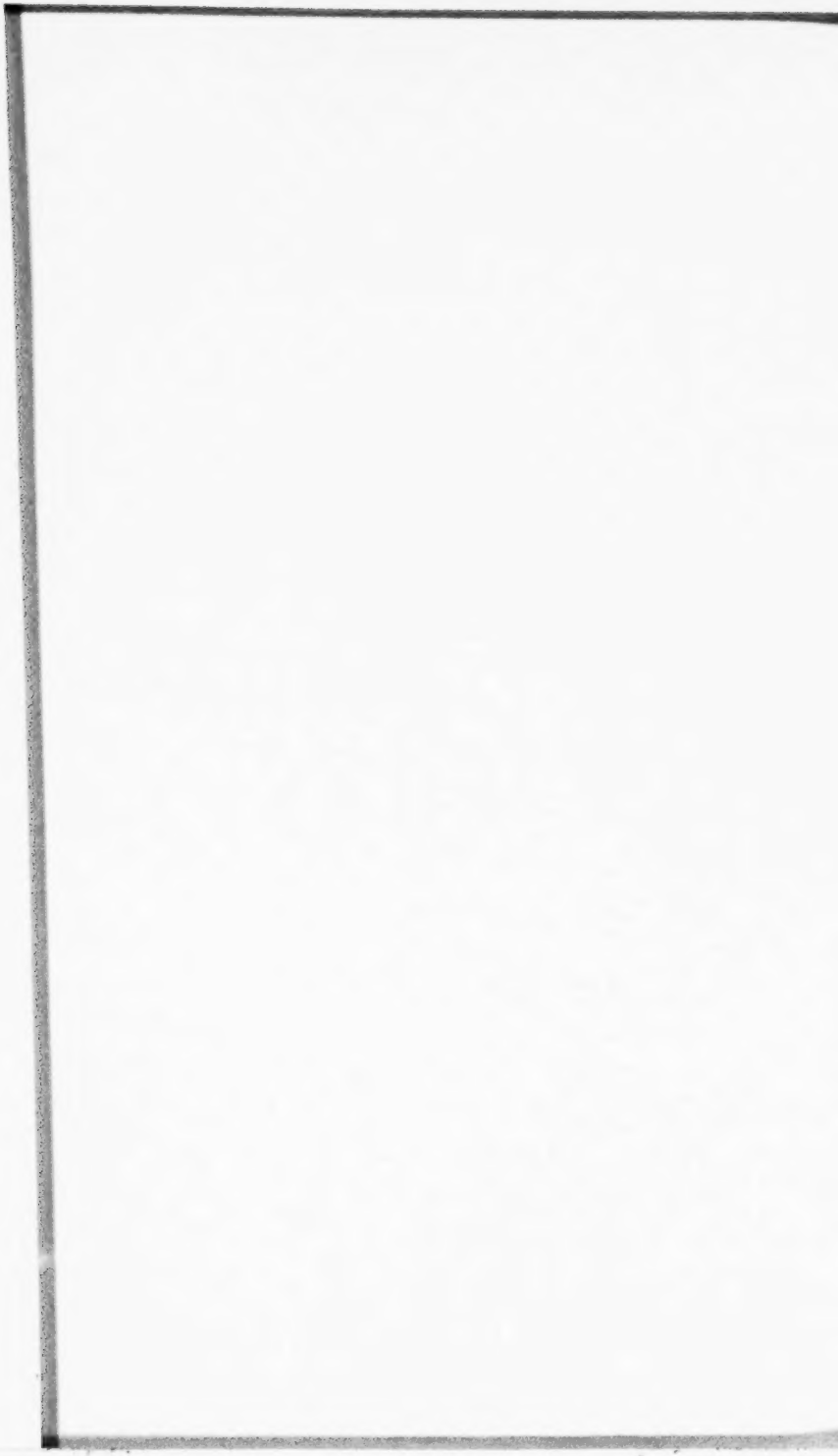

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 1169

JAMES C. GABRIEL, *Pro Se*, a Class B Stockholder in MISSOURI PACIFIC RAILROAD COMPANY, for himself,

Petitioner-Appellant, Pro Se,

—v.—

BETTY LEVIN, on behalf of herself and all other holders of Class B Common Stock of MISSOURI PACIFIC RAILROAD COMPANY, on behalf of said corporation, and ROBERT LE VASSEUR and ALLEGHANY CORPORATION,

Plaintiffs-Appellees,

—against—

MISSISSIPPI RIVER CORPORATION, MISSOURI PACIFIC RAILROAD COMPANY, ROBERT H. CRAFT, T. C. DAVIS and THOMAS MILBANK,

Defendants-Appellees.

PETITION FOR A REHEARING OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner-Appellant, *Pro Se*, is not a member of a class purportedly represented by Plaintiffs-Appellees. As a

Class B equity bearing common stockholder, Appellant petitions this Honorable Court, pursuant to its Rule 58(2), for a rehearing of his prior petition to this Honorable Court for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit in order that the U.S. Government Internal Revenue Service may become enabled to collect over $100,000,000 in capital gains taxes in the transfer of over $615,000,000 in retained income and property values that has paid no taxes in this huge transfer from one class of railroad stocks to another class of railroad stocks. Said prior petition having been dated February 17, 1976 and denied by this Court by an Order entered April 5, 1976.

Factual Background

The original action of *Betty Levin, et al.* v. *Mississippi River, et al.*, began in December of 1967, was made into a class action on October 9, 1968 by Order of Hon. Frederick van Pelt Bryan on dividends and conspiracy, with no intervenors permitted after December 20, 1968, was to obtain better dividends for Class B stockholders of MoPac, jurisdiction being based solely on diversity of citizenship. 28 U.S.C. 1332.

MoPack stock was of two classes: Class B, consisting of 39,731 shares, representing the equity value ownership of MoPac amounting to $894 million dollars, at $22,500 per share; and the Class A $5 preferred stock, made up of 1,864,000 shares, which are limited to $5 noncumulative dividend paid annually when and if earned and declared, plus $100 per Class A in the event of dissolution or liquidation of the new company taken out of the assets of

the company before any distribution is made to the holders of the Class B equity bearing common stock, who thereafter shall be entitled to receive any further distribution of the assets of the company without further participation by holders of Class A preferred stock. The Class A $5 preferred stock represented a value of $186 million dollars as of December 31, 1972. The total value of MoPac stocks are $186 million plus $894 million or $1,080 million.

On the 19th of March, 1973, the Federal District Court, S.D. of N.Y., approved a "Settlement" of the dividend class suit which called for a "Recapitalization" of MoPac, setting an arbitrary value for settlement purposes for the Class B stock at $2,450 value per share, without right of due process of law evaluation, so that the equity value of the Class B stock in MoPac was reduced from a high of 82.5% to 25.5%. At the same time the Class A $5 preferred stock value rose from 17.5% to 74.5% ownership of MoPac. These figures mean Class B value went from $22,500 per share to $2,450 per Class B, or from $894 million value for Class B to $279 million for Class B. Class A went from $100 value to $430 per preferred share and from a total value of $186 million for the Class A $5 preferred, to the sum of $801 million, or a gain of about $615 million without payment of any capital gains taxes to the U.S. Government I.R.S.

Alleghany Corporation owned beneficially approximately 53% of Class B MoPac common equity bearing stock or 21,243 shares, unlike Mississippi beneficially owns 1,158,395 shares or approximately 62% of the outstanding Class A $5 preferred MoPac stock.

Despite petitioner's efforts to have the Class B equity bearing common stocks of MoPac evaluated under due

process of law by Federal Court Order according to the "Agreed System Plan" of Reorganization of 1954-1955, 290 I.C.C. 477, pages 492, 624, 625 and 665, or Charter, in order to find Class B's real and true value for exchange purposes, petitioner's efforts have not succeeded to obtain such relief, even though petitioner had cited the fact that the United States Government Internal Revenue Service was being defrauded out of over $100,000,000, as of Dec. 31, 1972, in capital gains taxes in the transfer of over $615 million values from the Class B equity bearing common stocks to the Class A $5 preferred $100 value stock, which have now increased in value from $186 million to $801 when you add the $615 million and $186 million, the $5 preferred has increased in value from $100 per share to $430 per share now convertible into common. These figures are as of December 31, 1972.

Tax Factors Which Warrant a Rehearing

The tax consequences against the interests of the United States Government Internal Revenue Service are over the sum of $100,000,000 that the Internal Revenue Service is losing because the Federal courts are refusing to allow the proper higher evaluation of the MoPac Class B equity bearing common shares under due process of law according to MoPac's Charter or "Agreed System Plan" of 1954-1955, 290 I.C.C. 477, pages 492, 599, 624, 625 and 665. This Charter is the law of the United States because it was approved by the ICC in July of 1954, which certified it to the United States Federal District Court of original jurisdiction in Saint Louis Eastern Division, Eastern Judicial District of Missouri, which in turn approved it and which

certified it to the Commission on February 25, 1955. All that Petitioner James C. Gabriel wants is a due process of law evaluation of his Class B shares so that the U.S. Government I.R.S. can collect its $100 million on capital gains taxes.

As of December 31, 1972, under due process of law evaluation of 39,731 shares of Class B, gives B a value of $894 million, or $22,500 per Class B which is made up of $349 million Retained Income, and $545 million Consolidated non-depreciable properties, including land and land rights or mineral rights in gas, oil, coal, etc., properties stated at estimated original cost as of January 1, 1955 by I.C.C. evaluation, plus additions and betterments at cost, less retirements since the dates of valuation. In MoPac, these values belong to the Class B equity bearing common stock. Properties have increased many times the $545 million value since 1955.

Without a due process of law evaluation, according to the Settlement Agreement by and between Alleghany Corp., Mississippi River Corp., and MoPac, Class B equity Common gets a value of $2,450 per share or about $97 million value for all of its 39,731 shares. By participation in the Plan of Recapitalization Class B gets the equivalent of $279 million value. The Class A $5 preferred receives the difference in value between $894 million and $279 million or $615 million value made up of Class B's Retained Income and Properties, and this $615,000,000 values that have been transferred from the Class B equity bearing common stocks to the Class A $5 preferred does not pay any capital gains taxes to the United States Government I.R.S. The fact remains that according to the MoPac I.C.C.

"Agreed System Plan" or Charter of 1954-1955, 290 I.C.C. 477, Class B has a value of $894 million or $22,500 per share, and Class A $5 preferred has a value of $100 per share or $186million total fixed value. The "Settlement Agreement," dated as of December 8, 1972, is by and between Alleghany Corp., and Mississippi River Corp. who is to purchase the 53% MoPac holdings that Alleghany owns, at $2,450 per share, with MoPac participating in this transaction. But when this "Settlement Agreement" goes outside of its scope, which is between Alleghany and Mississippi, with MoPac participating, the "Recapitalization Plan" tries to rope into this "settlement" all the minority Class B stockholders including the dissenters against the "Settlement" and "Plan of Recapitalization" which uses Section 20a of the Interstate Commerce Act to put over this plan of recapitalization scheme to get Class B at a low price. Section 20a was passed by Congress in 1920 in order to protect stockholders in railroads from being defrauded by corrupt railroad management which would issue and sell to the unwary public watered railroad stocks. The Interstate Commerce Commission was supposed to act as a policeman to stop this sort of fraud against the investing public interest in railroads. The general public investors are involved here and 290 I.C.C. 477 or MoPac charter valuations should have been used to properly evaluate Class B for exchange purposes. But instead of acting as a policeman, the I.C.C. cooperated with the other side which means Mississippi River Corp., and helped to put over this scheme which helps short change and defraud Class B stockholders out of over $615 million, and the Internal Revenue Service defrauded out of over $100,000,000 in Capital gains taxes. The I.C.C. has the expertise to evaluate Class B under due process of law according to MoPac's

charter, which would give Class B its real true value of about $22,500 per share instead of the mere $2,450 value per share which $2,450 per Class B the I.C.C. says it is "Fair Value" which was for "Settlement" purposes only between Alleghany and Mississippi which helps defraud the U.S. Government I.R.S. out of over $100 million in taxes.

At the I.C.C. Hearing September 17 to 21, in Washington, D.C., Finance Docket #27386, I asked the I.C.C. to evaluate Class B under due process of law according to "Agreed System Plan" or charter, 290 I.C.C. 477, but the I.C.C. refused to do so. That is the reason why I am here in the U.S. Supreme Court, and that is the reason why the I.R.S. is on the verge of losing $100 million.

Petitioner-Appellant sincerely believes that this Honorable U.S. Supreme Court must direct that the equity bearing MoPac Common B stock be ordered to be evaluated under due process of law according to MoPac's Charter or "Agreed System Plan." Please do not forget that the lower Federal Court is converting the $5 Class A preferred $100 value stocks into equity bearing common shares, which increases this $100 value preferred stock into a value of $430 per share at the same time decreases the value of the Class B equity Common from $22,500 per share to only $2,450 per share. You cannot lawfully convert a preferred stock into an equity bearing common stock unless a due process of law evaluation has been made which is as it should be done under the Constitution of the U. S. The United States Government I.R.S. must also be accommodated to a due process of law evaluation to be able to collect the over $100,000,000 in Federal Income Capital gains taxes in the transfer of over $615 million values from the Class B equity bearing common shares, to the $5

Class A preferred $100 value stocks. Whoever heard of transferring over $615 million values without the payment of Federal Income Taxes? Whoever heard of changing a preferred into a common without due process evaluation. This is outrageous, both to the Class B shareholders and to the U.S. Government Internal Revenue Service. This Honorable U.S. Supreme Court has a very important duty to perform and it must be done now in order to remove any ideas from the minds of the American public.

Another reason why the Internal Revenue Service must collect its taxes on this MoPac case.

The "Settlement Agreement" dated as of December 18, 1972, is "by and between Alleghany Corp., MoPac, and Mississippi River Corp." It is a contract as between Alleghany and Mississippi for the sale to Mississippi of Alleghany's 53% stock holdings of 21,243 shares at a value of $2,450 per Class B. This is an agreement of sale between Alleghany and Mississippi for the sale of Alleghany's Class B shares. But they included all of the rest of the Class B minority holders even though the latter did not sign the "Settlement Agreement" and who were not a party to this agreement and who voted against it by voting against the "Plan of Recapitalization. The scope of the Agreement was further enlarged to include even those who did not even sign the "Agreement" and who voted against the "Plan of Recapitalization" and who were Class B dissenters against this "Plan of Recapitalization," proof of which is that Plaintiff William A. Wesson, 67 Civ. 5095 (E.W.) appealed to Hon. Weinfeld, U.S.D.J. on Tuesday, April 10th, 1973 to be allowed to opt out this "Settlement Agreement" or "Plan of Recapitalization" of MoPac and his Honor re-

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fused him to do so. Plaintiff Wesson wanted his Class B equity bearing shares evaluated under due process of law as it was his Constitutional right to do so, the class action having started on dividends and conspiracy pleadings, and now was changed into a "Plan of Recapitalization," "Recapitalization" never being claimed in any of the pleadings. Mississisippi River Corp. became too greedy, to entrap all of the Class B holders, even the dissenters who had a legitimate Constitutional right to dissent, so as to have their Class B equity shares evaluated under due process of law, but the $2,450 per Class B equity shares was so low that Class A $5 preferred Mississippi River Corp. could not afford to let anyone escape from the trap set for the minority Class B holders at such a cheap low price and so hired politically influential lawyers. So when at first Hon. Weinfeld said, on April 10, 1973 at the hearing for Mr. Wesson that Wesson could opt out of this plan, the attorneys for MoPac and Mississippi right there and then protested and said that if Wesson was allowed to opt out, so too would others opt out and that would not be too good for the "Plan of Recapitalization." So Hon. Weinfeld reversed himself, and Wesson was told that he could not opt out. How unconstitutional, how unjust. This Weinfeld decision also hurt the I.R.S. for over $100 million in taxes.

Therefore, the scope of the "Settlement Agreement" to entrap all Class B stockholders into the "Plan of Recapitalization" becomes an unlimited scope, no longer as it was made originally, its walls too thin to hold up against Class B stockholders' rights according to Article 1, Section 9—"No bill of attainder or ex post facto law shall be passed." Section 10—"No State shall pass any bill of attainder, ex post facto law, or law impairing the obligation

of contracts." This "Plan of Recapitalization" is impairing obligation of contract—the "Agreed System Plan * * *," or the 5th Amendment "No Person shall be deprived of life, liberty, or property, without due process of law; * * *." The Federal Courts will not allow me to have my Class B MoPac equity shares evaluated under due process, according to 290 I.C.C. 477. By being greedy, Mississippi has trapped herself because due process evaluation is now a must. Class action on dividends and conspiracy as ordered by Hon. Frederick vP. Bryan, U.S.D.J., on Oct. 9, 1968, was convoluted into a "Settlement Agreement" or "Plan of Recapitalization" on Dec. 18, 1972, which was approved on March 19, 1973 by the Federal District Court of N.Y., S.D.N.Y., at an arbitrary settlement value of $2,450 per Class B, without right of evaluation. This is not constitutional. A property owner has a right to a due process or law evaluation of his property and no Federal Court has the right to deny him this right. The U.S. Federal Courts are there to enforce the U.S. Constitution.

Therefore, a due process of law evaluation under the MoPac Charter, 290 I.C.C. 477, is called for. In this way the United States Government Internal Revenue Service will become enabled to getting its capital gains taxes that are due to it in this huge transfer of $615 million values from Class B equity bearing common shares to the Class A $5 preferred stock $100 value stock, which as of Dec. 31, 1972, had increased in value to $430 per share and attained the status of a common equity bearing stock without payment of any capital gains taxes on this grand heist.

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Another reason why MoPac Class B must be evaluated under due process to help I.R.S. collect taxes:

According to MoPac's Charter, 290 I.C.C. 477, pages 624, 625, statement made by I.C.C. Commissioner Mahaffie gives light to the present situation when he states the following regarding MoPac Class B equity common shares:

"It is proposed to award it only a small amount in actual par value, but to make it the residuary beneficiary of any future prosperity the property may enjoy. The prior Class 'A' stock is limited as to dividends and is noncumulative. It will be largely of a speculative character for some years at best. But the 'B' stock is for the present, and for the foreseeable future, principally valuable as a token for speculation." For that reason, Class B equity bearing common shares had at Dec. 31, 1972 a Retained Income of $349 million, and property values of $545 million, or a total of $894 million for its 39,731 Class B shares, or $22,500 value per Class B. We can thus readily see that MoPac's "Agreed System Plan" of Reorganization or charter calls for a due process of law evaluation. It shows that Class B is the equity owner and Class B has a value of $894 million, all belonging to Class B according to MoPac's charter, and to give Class B a value of only $2,450 per share as "fair value" by Hon. Weinfeld's Court or about $97 million for all of the shares of Class B, or a value of $279 million if all Class B shares participate in "Recapitalization Plan" is robbing Class B shareholders over $615 million, which the U. S. Government I.R.S. should collect at least a capital gains tax or over $100 million on the higher valuation under due process of law evaluation.

Hon. Weinfeld's Court has erred and was misdirected into allowing the transfer of over $615 million values from

the Class B equity MoPac shares to the Class A $5 preferred. In 1955 Hon. Weinfeld concurred in *Wood* v. *United States,* 132 F. Supp. when he decided against the transfer of values from one class of railroad stocks to another class of railroad stocks in a solvent corporation, that this was unconstitutional. Hon. Weinfeld's decision on the present MoPac case is just the opposite of his decision in the *Wood* case. This Weinfeld decision is not only costing the Class B stockholders over $615 million but it is costing the U. S. Government Federal Income taxes that should be paid on this transfer of values. I seem to be the only one who cares for the interest of the U. S. Government. What has happened?

Additional Tax Factors Which Warrant a Rehearing

Petitioner has been fleeced out of over 69 percentage points out of the value of his Class B property by means of the procedural device of a class action, Rule 23(e), FRCP, or over $20,000 per Class B for each and every Class B share Petitioner owns because a due process of law evaluation of his Class B MoPac was prohibited by the lower Courts. But I am not the only one so mistreated by Rule 23(e). The U. S. Government I.R.S. has also been defrauded, because of this Rule 23(e) F.R.C.P., out of over $100 million in Federal Income taxes because a due process of law evaluation was prohibited. Alleghany, owning Jones Motor Co., was pressured by the I.C.C. to divest themselves out of their Class B equity bearing MoPac shares in order to be allowed by the I.C.C. to remain as a motor carrier under the I.C.C. jurisdiction (see Mc-F-10444—Alleghany Corp., Jones Motor Co., p. 350), in order to save several million dollars annually in I.R.S. tax penalties, and also

in order to evade the S.E.C. Federal Securities laws as it pertains to their control of Investors Diversified Services, Inc., the largest investment Mutual Fund complex in the world, of almost $7 billion. The Federal courts have so far declined to help the embattled Class B shareholders, to help them evaluate their Class B equity hearing common stocks under due process of law. You would think that the Federal Courts were being asked for something that was taboo. If the Federal Courts prohibit and decline to allow the Class B stockholders a due process of law evaluation of their very own stocks which is their right to do so under the Federal Constitution, then to what useful service are the Federal Courts if they cannot enforce the United State Constitution? How about the rights of the U. S. Government I.R.S.? This is a very eye opening thing that is happening here. Where is justice? How about my rights secured by the Constitution of the U. S., how about my civil rights? Is this not a conspiracy against my civil rights?

How about the rights of the United States Government Internal Revenue Services for their over $100 million in capital gains taxes by a due process of law evaluation of the Class B equity bearing MoPac common shares to find their real true value according to the MoPac I.C.C. "Agreed System Plan," due process of law evaluation according to 290 I.C.C. 477, pages 492, 624, 625 and 665? Why should the Federal Courts, especially the Supreme Court of the United States, allow the transfer of over $615,000,000 values in Retained Income and properties in oil, coal, gas, etc., be transferred from the Class B equity shares to the Class A $5 pfd. and also to allow these Class A $5 pfd. to be converted into equity common shares without the payment of Federal capital gains income taxes to the Internal

Revenue Services? Does not the Constitution of the United States provide that laws shall apply equally to all without favoritism to some or discrimination against others? Why should Mississippi River Corp. be favored by not having a due process of law evaluation of Class B equity bearing common shares and Class A $5 preferred, $100 value stocks? If this due process of law evaluation takes place, it will cost Mississippi River Corp. over $62,000,000 in Federal I.R.S. taxes. The "Settlement Agreement" is no longer such, because Mississippi River Corp. got too greedy and tried to rope into this so-called "Plan of Recapitalization" all of the minority Class B stockholders and the dissenters. How about I.R.S. $100 million in taxes due it?

Conclusion

In all due respects to your Honorable Sirs whom I think very highly of because of your great responsibility and of the very great burden that you are carrying, it seems to me that it is a great pity that I am about the only one who is outspokenly standing up for the rights and interests of the United States Government Internal Revenue Service, which has over $100,000,000 in capital gains taxes coming to it in uncollected taxes due to the United States Government in the transfer of over $615,000,000 taken from the equity bearing Class B MoPac common shares and given to the Class A $5 preferred $100 value shares, without having paid any taxes on this huge transfer of over $615,000,000 values in addition to this Class A $5 preferred having become converted into an equity bearing common stock. Who ever heard of such a big give away of over $615,000,000 in Retained Income and Property values without paying taxes at least on this huge transfer to the I.R.S.?

Petitioner-Appellant, *Pro Se,* not being a member of a class purportedly represented by Plaintiffs-Appellants, petitions this Honorable Supreme Court pursuant to Rule 58(2) for a rehearing of his prior petition to this Court for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit because the reasons for a rehearing are substantial, legally interesting, and if justice is to be served this petitioner's request for a rehearing must respectfully be approved for the cause of justice that will financially benefit the United States Government many millions of dollars in Federal Capital Gains Income Taxes that will not otherwise be collected by the Internal Revenue Service.

In addition, the Court's approval of this petition for a rehearing of petitioner's prior petition to this Court for a Writ of Certiorari will command more respect for the rights of the United States Government I.R.S. in addition to helping the public's regard for our Federal Court System.

Petitioner's prayer for relief is to have this Honorable Court order that petitioner's MoPac Class B equity bearing common stocks be evaluated under due process of law according to the MoPac Charter or "Agreed System Plan," 290 I.C.C. 477, to find Class B real and true value so that the U. S. Government I.R.S. may be able to collect taxes on it. For the reasons stated above and in the original petition, please grant petitioner a Writ of Certiorari.

Dated: Monmouth County, New Jersey
April 30, 1976

Respectfully submitted,

James C. Gabriel, Pro Se

JAMES C. GABRIEL, *Pro Se*
P.O. Box 94
Sea Girt, New Jersey 08750
(201) 899-6200

Certificate of Petitioner *Pro Se*

I certify that the within Petition for Rehearing is presented in good faith and not for delay.

Dated: Monmouth County, New Jersey
April 30, 1976

James C. Gabriel Pro se

JAMES C. GABRIEL

Certificate of Service

I, JAMES C. GABRIEL, *Pro Se,* Petitioner, do hereby certify that 3 copies of each of the above and foregoing Petitioner's Petition for a Rehearing of Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit, has been deposited in the United States Mail, postage prepaid, on this the 30th day of April, 1976, to the following addressees:

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James C. Gabriel Pro Se

JAMES C. GABRIEL, *Pro Se*
Petitioner

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